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ATTORNEYS FOR USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,

 USA CAPITAL REALTY ADVISORS, LLC,

 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,

 USA CAPITAL FIRST TRUST DEED FUND, LLC,

 USA SECURITIES, LLC,

 Debtors

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter Number: 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

Affects:

- ☐ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

**USA CAPITAL DIVERSIFIED
 TRUST DEED FUND, LLC'S
 EIGHTH REPORT OF
 ACTION TAKEN AND
 PROGRESS TOWARDS
 CONSUMMATION OF
 CONFIRMED PLAN OF
 REORGANIZATION**

**POST-EFFECTIVE DATE USA CAPITAL DIVERSIFIED TRUST
 DEED FUND, LLC'S EIGHTH REPORT OF ACTION TAKEN AND PROGRESS
 TOWARDS CONSUMMATION OF CONFIRMED PLAN OF REORGANIZATION**

Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC ("Diversified" or
 "Revested Debtor"), a revested debtor in the above-captioned chapter 11 cases (the "Chapter 11
 Cases"), by and through its counsel noted above, hereby submits this Eighth Report of Action
 Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (the "Eighth
 Report"), pursuant to the Court's "Order Confirming the "Debtors' Third Amended Joint

Chapter 11 Plan of Reorganization,' as Modified Herein" [Docket No. 2376] (the "Confirmation Order") entered January 8, 2007. *See* Confirmation Order, ¶ 74. The Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan") went effective on March 12, 2007 (the "Effective Date").

This Eighth Report is for the period from **March 31, 2009 to July 31, 2009**. This Eighth Report incorporates the requirements and structure of former Rule 3020(a) of the Court's Local Rules of Bankruptcy Practice, abrogated in May 2006, which were as follows:

(A) A schedule of personal property costing more than \$5,000 and any real property acquired, sold or disposed of and the price paid for each:

Personal property costing more than \$5,000:	None
Real property acquired, sold or disposed of:	None
Total:	\$0.00

(B) A schedule listing each debt, the total amount required to be paid under the Plan, the amount required to be paid to date, the amount actually paid to date, and the amount unpaid:

Due to the nature of its operations as an investment fund with contracted services through intercompany debtor entities and no employees, Diversified had only a relatively small number of claims filed against it in the Chapter 11 Cases. Such claims included general unsecured claims (many of which were misfiled as creditor claims by holders of equity interests in Diversified) and administrative expense claims related to professional fees accrued during the Chapter 11 Cases.

(C) A schedule of executory contracts entered into:

Pursuant to the Plan, Diversified entered into agreements, as of March 13, 2007, retaining professionals to provide legal and financial advisory services necessary to conduct Diversified's affairs. Those agreements are detailed in previous quarterly reports filed with the Court.

(D) A statement listing each postpetition tax (i.e., income, payroll, property, sales), payee, and the amount actually paid:

1 Federal Unemployment taxes: None
 2 Federal Payroll taxes: None
 3 Nevada Unemployment taxes: None
 4 Total: \$0.00

5 **(E) Progress toward completion of the Plan and a list and status of any pending**
 6 **adversary proceedings or motions and resolutions expected:**

7 **1. General Progress**

8 The major terms of the Plan with respect to Diversified have all been
 9 accomplished. The Operating Agreement of Diversified has been amended, USA Capital
 10 First Trust Deed Fund, LLC has made certain payments and assignments to Diversified,
 11 and Diversified is operating in the post-confirmation realm.

12 Diversified continues to focus on recovering assets and the investigation and
 13 prosecution of causes of action against potential recovery targets. Diversified recently
 14 updated its investors on the status of its efforts to monetize assets and make distributions.
 15 See July 7, 2009 letter from Chairman of the Board Robert Worthen to investors (the
 16 "July Letter"), a copy which is attached hereto as Exhibit A. The July Letter provides a
 17 table of the cases Diversified currently has filed against potential target defendants, an
 18 outline of Diversified's participation in other bankruptcy cases, an update on the status of
 19 additional settlement funds to be distributed to investors, as well as information about how
 20 investors can contact Diversified representatives with any questions they may have.

21 **2. Nondischargeability Complaint – In re Thomas A. Hantges**

22 On February 11, 2008, Diversified filed a nondischargeability complaint (the
 23 "Hantges Dischargeability Complaint") in the Thomas A. Hantges bankruptcy
 24 proceeding. [Docket No. 527 in Bankruptcy Case No. 07-13163; Adversary Case No.
 25 08-01041]. The Hantges Dischargeability Complaint alleges that Mr. Hantges' debts to
 26 Diversified should not be discharged under 11 U.S.C. § 523 because Mr. Hantges (1)
 27 obtained money and property from Diversified through false pretenses, false
 28 representations, and/or actual fraud, (2) Mr. Hantges misappropriated Diversified's

1 money and property while acting in a fiduciary capacity towards Diversified, and (3)
 2 Mr. Hantges obtained Diversified's money and property by means of willful and
 3 malicious injury and/or reckless disregard to Diversified. The Hantges Dischargeability
 4 Complaint seeks a determination that all of Mr. Hantges' debts to Diversified are non-
 5 dischargeable, and a judgment for Diversified in an amount not less than \$149,555,735.

6 On October 24, 2008, the Court entered an *Order Approving Oral Stipulation to*
 7 *Stay Discovery Pending Further Order of the Court* [Docket No. 21], which stayed
 8 discovery pending either 1) the filing of a chapter 11 plan providing for discharge of
 9 Mr. Hantges or 2) the conversion of the chapter 11 case to a chapter 7 bankruptcy. On
 10 March 20, 2009, the parties participated in a status check on the adversary proceeding
 11 against Mr. Hantges. The chapter 11 trustee for Mr. Hantges' bankruptcy estate, Michael
 12 Carmel, stated that there are too many contingencies at the moment for him to determine
 13 whether to file a chapter 11 plan or convert the case to chapter 7. Accordingly, the Court
 14 permitted the stay of litigation to continue, and ordered a telephonic status check for
 15 August 21, 2009, at 9:30 a.m.

16 3. Nondischargeability Complaint – In re Joseph D. Milanowski

17 On March 28, 2008, Diversified filed a nondischargeability complaint (the
 18 "Milanowski Dischargeability Complaint") in the Joseph D. Milanowski bankruptcy
 19 proceeding. [Docket No. 416 in Bankruptcy Case No. 07-13162; Adversary Case No.
 20 08-01090]. The Milanowski Dischargeability Complaint alleges that Mr. Milanowski's
 21 debts to Diversified should not be discharged under 11 U.S.C. § 523 because
 22 Mr. Milanowski (1) obtained money and property from Diversified through false
 23 pretenses, false representations, and/or actual fraud, (2) Mr. Milanowski misappropriated
 24 Diversified's money and property while acting in a fiduciary capacity towards
 25 Diversified, and (3) Mr. Milanowski obtained Diversified's money and property by
 26 means of willful and malicious injury and/or reckless disregard to Diversified. The
 27 Milanowski Dischargeability Complaint seeks a determination that all of
 28 Mr. Milanowski's debts to Diversified are non-dischargeable, and a judgment for

1 Diversified in an amount not less than \$149,555,735. Mr. Milanowski filed an Answer
2 [Docket No. 7 in Adversary Case No. 08-01090] on June 30, 2008.

3 On September 30, 2008, Diversified and Mr. Milanowski appeared for a
4 Scheduling Conference before the Court, and the Court agreed to stay the adversary
5 proceeding pending certain developments in Mr. Milanowski's underlying bankruptcy
6 case. The Court has set a status check for November 17, 2009 at 9:30 a.m.

7 As to the underlying bankruptcy case, on June 2, 2009 the Court entered an Order
8 approving chapter 11 trustee Ford Elsaesser's *Motion to Approve Settlement Agreement*
9 *and Release Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure*
10 [Docket No. 475]. The proposed settlement agreement with Mr. Milanowski
11 contemplates conversion of the chapter 11 bankruptcy case to a chapter 7 bankruptcy
12 case. The Court has not yet entered an order converting the case to chapter 7.

13 5. Status of Complaints Filed

14 Diversified and USACM have filed a number of complaints to recover assets
15 through their litigation counsel, Diamond McCarthy LLP. Diversified and USACM have
16 resolved their dispute with Piercy, Bowler, Taylor & Kern, PC on confidential terms
17 satisfactory to all parties.

- 18 • *USACM Liquidating Trust v. Deloitte & Touche, LLP and Victoria Loob (Case*
19 *No. 08-00461)*: This Complaint was filed in United States District Court, District
20 of Nevada, on April 11, 2008. Discovery closes November 30, 2009, the
dispositive motion deadline is December 30, 2009, and the last day to file a joint
pretrial order is January 29, 2010 [Docket No. 68].
- 21 • *USA Capital Diversified Trust Deed Fund LLC v. Stanley E. Fulton (Adversary*
22 *Case No. 08-01132)*: This Complaint was filed as an adversary proceeding in
Jointly Administered Bankruptcy Case No. 06-10725 on April 11, 2008. The
23 parties participated in a mediation in early May 2009. Defendant Fulton filed a
Motion for Summary Judgment on July 15, 2009, and it is currently set for
24 hearing on August 20, 2009.
- 25 • *USAC Liquidating Trust and USA Capital Diversified Trust Deed Fund, LLC v.*
26 *Mary Petersen, individually and as Trustee of the Mary Petersen Family Trust*
Dtd 8/12/98; Michael Petersen individually and as Trustee of the Michael D.
27 *Petersen Family Trust Dtd 8/12/98; Kathryn Petersen individually and as Trustee*
of the Kathryn L. Petersen Living Trust and the KLP Trust Dtd 7/15/99
28 *(Adversary Case No. 08-01134)*. Plaintiffs filed a Motion for Leave to File First
Amended Complaint, which was granted in part and denied in part on August 3,
2009 [Docket No. 126].

- *USA Capital Diversified Trust Deed Fund v. Kathryn L. Petersen, individually and as Trustee of the Kathryn L. Petersen Living Trust and Trustee of KLP Trust Dtd 7/15/99 and Specialized Development Tahoe, LLC (Adversary Case No. 08-01133)*: Plaintiffs filed a Motion for Leave to File First Amended Complaint, which was granted in part and denied in part on August 3, 2009 [Docket No. 126].
- *USA Capital Diversified Trust Deed Fund, LLC v. Wells Fargo Bank, N.A. (Adversary Case No. 08-01135)*: Trial is currently set for March 14, 2010 – March 23, 2010. [Docket Nos. 145-151]. On November 29, 2008, Defendant filed a *Motion to Compel Arbitration and Dismiss, or, Alternatively, to Stay Proceedings Pending Arbitration* [Docket No. 79], and then an amended motion to stay pending arbitration on February 20, 2009 [Docket No. 104], which the Bankruptcy Court denied in an oral ruling on June 19, 2009. Defendant Wells Fargo Bank, N.A. elected to appeal that ruling to the United States District Court [Docket No. 156]. Plaintiffs have filed a Motion to Amend the Joint Discovery Plan, which is set for hearing on August 21, 2009 [Docket No. 162].
- *USACM Liquidating Trust and USA Capital Diversified Trust Deed Fund, LLC v. Beadle, McBride, Evans & Reeves LLP, Reeves, Evans, McBride & Zhang, LLP, TG McBride CPA Ltd., and T. Garth McBride (Adversary Case No. 08-01164)*: This Complaint was filed as an adversary proceeding in Jointly Administered Bankruptcy Case No. 06-10725 on May 16, 2008. It contains claims by Diversified against the defendants for Aiding and Abetting/Participation in Breaches of Fiduciary Duty, Accounting Malpractice/Professional Negligence, and Breach of Contract. On October 20, 2008, Diversified filed a *Motion to Approve Compromise and Settle Controversies with Beadle, McBride, Evans & Reeves, LLP, et al.* [Docket No. 28]. The Court approved the proposed settlement, and the adversary case closed on January 28, 2009.

(F) **A statement regarding the status of payment of UST quarterly fees:**

All UST fees have been paid in full through July 31, 2009, the final date covered by this Eighth Report.

Dated this 17 day of August, 2009.

SNELL & WILMER L.L.P.

By: 

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